

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that the Regulations are Necessary

Sections 30-757.1, 30-757.1(a), and Handbook Section 30-757.1(a)(6)(A)

Sections 30-757.1

Specific Purpose:

This section is amended to incorporate time task guidelines for certain service care categories and to provide criteria for exceptions when recipients needs fall outside the hourly task time guidelines. The section is also amended to incorporate existing time frequency guidelines, which are relocated from Section 30-758.

Factual Basis:

The amendments to this section are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) which requires the development of hourly task time guidelines with a range of time to complete tasks, a guide for exception determinations when needs fall outside the range, and instructions to assist counties in the authorization of service hours for recipients of supportive services. The relocation of existing time frequency guidelines from Section 30-758 to this section is necessary for clarity, consistency, and administrative ease by placing the guidelines in the applicable service categories which are defined and located in Section 30-757.

Sections 30-757.1(a) et seq.

Specific Purpose:

These sections are adopted to specify the requirements for time guidelines, the exception requirements which must apply when recipients' needs fall outside the time guidelines, and the requirement for documentation of the basis for any exception.

Factual Basis:

This adoption is necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions when recipients' needs fall outside the time guidelines.

**Final Modification:**

**As a result of testimony received, Sections 30-757.1(a) and (a)(1) were amended to include clarifying language which emphasizes the underlying purpose of the time guidelines and the need to ensure the recipient's health, safety, and independence when authorizing time; and to include a general handbook provision to further identify the necessity of universal precautions, what they are, and why they need to be practiced.**

**Also, to specifically address a testifier's concerns about making it clear that "exceptions" are "a normal part of the assessment process," Section 30-757.1(a)(3) has added the clarifying phrase "and shall be considered a normal part of the authorization process."**

Handbook Section 30-757.1(a)(6)(A)

Specific Purpose/Factual Basis:

This handbook section is relocated from Handbook Section 30-758.411 to explain the purpose of obtaining documentation for granting any exception to the time guideline. The relocation is necessary for clarity, consistency, and administrative ease by placing the time guidelines in the applicable service categories which are defined and located in Section 30-757.

A minor language modification to replace the word "assessments" with "service authorizations," in Handbook Section 30-757.1(a)(6)(A)1. is also made for clarity since documentation is required to explain the reason for authorizing service hours outside the guidelines.

**Final Modification:**

**As a result of testimony received, this section is amended to include additional Handbook language [Sections 30-757.1(a)(6)(B), (C) and (D)] to clarify the exception process.**

Section 30-757.11(k)

Specific Purpose:

This section is amended to specify that wheelchair cleaning and changing and recharging wheelchair batteries is included as part of miscellaneous "domestic" services.

Factual Basis:

The amendment is necessary for clarity and consistency with the current policy to allow wheelchair cleaning and changing and recharging wheelchair batteries as part of miscellaneous "domestic" services. This policy is also referenced at current Handbook Section 30-780.1(b)(1)(J). This regulatory change is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

Section 30-757.111

Specific Purpose/Factual Basis:

This section is relocated from Section 30-758.11 and amended to specify the maximum time guidelines per month per household for "domestic" services unless the recipient's need requires an exception to exceed this limit. The relocation to this section is necessary for

clarity, consistency, and administrative ease by placing time guidelines with the applicable service care categories which are defined and located in Section 30-757.

Sections 30-757.131 and (a) through (c) et seq.

Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in the preparation of meals; (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for "preparation of meals." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

**Final Modification:**

**As a result of testimony received, Section 30-757.131 is amended to add "trimming meat" that was inadvertently omitted from the proposed regulations into the related services for the preparation of meals.**

Sections 30-757.132 and (a) through (d) et seq. and Handbook Sections 30-757.132(c)(1)(A) and (c)(2)(A)

Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in providing "meal cleanup;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range. Handbook examples are added to the section for clarity.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions in providing meal cleanup. Handbook examples are necessary for clarity. The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

### **Final Modification:**

As a result of testimony received, this section is amended to expand the scope of allowable tasks to include “loading and unloading dishwasher” and “wiping up” related to meal cleanup at Section 30-757.132 and to add language to Section 30-757.132(a) to further clarify the difference between cleaning tasks which are considered under “meal cleanup” and tasks considered under “domestic” services. The section was also amended to correct the “Rank” cited in Handbook Section 30-757.132(c)(1)(A) and reverse the order of language in Handbook Section 30-132.2(c)(2)(A) to emphasize a situation that would result in more hours being assessed rather than less.

#### Section 30-757.133

##### Specific Purpose/Factual Basis:

This section is repealed, as it is no longer necessary because the task identified, “planning of menus,” has been relocated to Section 30-757.131 under the definition of tasks associated with the “preparation of meals” for clarity, consistency, and administrative ease.

Sections 30-757.134, .135, and .136 renumbered to Sections 30-757.133, .134, and .135, respectively

##### Specific Purpose/Factual Basis:

These sections have been renumbered for consistency in numbering made necessary by the repeal of current Section 30-737.133.

#### Section 30-757.134 renumbered from .135

##### Specific Purpose/Factual Basis:

Nonsubstantive, grammatical language changes are made to this section for clarity.

### **Final Modification:**

**The numbering of Handbook Section 30-757.134(c)(A) is corrected to (c)(1).**

#### Sections 30-757.134(c) through (d)

##### Specific Purpose/Factual Basis:

This section is relocated from Section 30-758.12, to specify the time guideline maximum per week per household for “laundry” services unless the recipient’s need requires an exception to exceed this limit. Handbook Section 30-757.134(d)(1) is relocated here from Section 30-758.122(b). These relocations are necessary for clarity, consistency, and administrative ease by placing time guidelines in the applicable service care categories defined and located in Section 30-757.

### **Final Modification:**

**As a result of testimony received, Handbook Section 30-134(d)(1) is amended by deleting the phrase "during nonpeak hour times and will utilize as many machines simultaneously" for clarity and Section 30-134 is amended to add Section 30-757.134(e) to clarify that an exception to this time guideline may be necessary for individuals with "incontinence." This clarification is necessary because this is a common instance and is a separate task which is not being considered under "bowel and bladder" care.**

Sections 30-757.135 and .135(a) renumbered from .136 and .136(a)

#### Specific Purpose/Factual Basis:

Technical language changes are made to these sections and necessary for consistency.

Section 30-757.135(b)(1)

#### Specific Purpose/Factual Basis:

This section is relocated from Section 30-758.13 to specify the maximum time guidelines per week per household for "food shopping" unless the recipient's need requires an exception to exceed this limit. This relocation is necessary for clarity, consistency, and administrative ease by placing the time guidelines in their applicable service care categories defined in Section 30-757.

Section 30-757.135(c)(1) renumbered from .136(c)(1)

#### Specific Purpose/Factual Basis:

This section is relocated from Section 30-758.14 to specify the maximum time guidelines per week per household for "other shopping/errands" unless the recipient's need requires an exception to exceed this limit. This relocation is necessary for clarity, consistency, and administrative ease by placing the time guidelines in their applicable service care categories defined in Section 30-757.

Sections 30-757.14(a) and (a)(1) through (4) et seq.

#### Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in providing "bowel and bladder" care; (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range; and (d) provide handbook examples for clarity.

#### Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions in providing "bowel and bladder" care. The amendment

identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

Sections 30-757.14(c) and (c)(1) through (5) et seq.

Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in providing care for "feeding;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions in providing care for "feeding." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

**Final Modification:**

**Section 30-757.14(c)(1) adds the phrase "and cup; cleaning recipient's face and hands" for clarity and (c)(2) makes a spelling correction to the word "bite" since the "e" was inadvertently omitted.**

Sections 30-757.14(d) and (d)(1) through (3) et seq.

Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in providing care for routine "bed baths;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for providing care for routine "bed baths." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

### **Final Modification:**

**As a result of testimony received, Section 30-757.14(d) is amended to add “powder and deodorant” into the scope of tasks. This language was inadvertently omitted.**

Sections 30-757.14(e) and (e)(1) through (7) et seq.

#### **Specific Purpose:**

These sections are amended to: (a) identify additional tasks that may be considered in providing care for "bathing, oral hygiene, and grooming;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

#### **Factual Basis:**

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for "bathing, oral hygiene and grooming." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

Sections 30-757.14(f) and (f)(1) through (3) et seq.

#### **Specific Purpose:**

These sections are amended to: (a) identify additional tasks that may be considered in providing care for "dressing;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

#### **Factual Basis:**

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions in providing care for "dressing" of recipients. The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300..

### **Final Modification:**

**A technical grammatical change is made to delete “and” and to move "corsets, elastic stockings, and braces" from Section 30-757.14(i) "care and assistance with prosthetic devices" to Section 30-757.14(f) "dressing." Also, as a result of testimony received,**

**Section 30-757.14(f)(3)(B) is amended to add the phrase "frequently bathes and requires additional dressing or" to the exception criteria for frequent changes of clothing.**

Sections 30-757.14(g) and (g)(1)

Specific Purpose/Factual Basis:

Technical language changes are made to these sections for consistency. To avoid duplication, "assistance on and off seats and wheelchairs" has been deleted since it has been placed under Section 30-757.14(h) "transfer."

**Final Modification:**

**Language is added for clarity to include the repositioning and rubbing of skin to promote circulation and/or to prevent skin breakdown.**

Sections 30-757.14(g)(3) through (g)(6) et seq.

Specific Purpose:

These sections are amended to specify the time guideline range to perform tasks identified based on the specific needs of the recipient and to specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for "repositioning and rubbing skin."

Sections 30-757.14(h) and (h)(1) through (4) et seq.

Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in providing care for "transfers;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for "transfer." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.



## Section 30-757.14(i)

### Specific Purpose:

This section is amended to identify additional tasks that may be considered to: (a) identify additional tasks that may be considered in providing "care and assistance with prosthetic devices;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

### Factual Basis:

This amendment is necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for "care and assistance with prosthetic devices." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

### **Final Modification:**

**Section 30-757.14(i) is amended to delete "braces, corsets, elastic stockings/garments" from the scope of tasks under "care and assistance with prosthetic devices". These items are considered under "dressing" and were inadvertently placed here.**

## Sections 30-757.14(i)(2) through (i)(4) et seq.

### Specific Purpose:

These sections are adopted to specify factors for the consideration of time for performing "care and assistance with prosthetic devices" and exceptions to the timeline guide range.

### Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for performing "care and assistance with prosthetic devices." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

## Sections 30-757.14(j) and (j)(1) Handbook

### Specific Purpose:

This section is amended to identify additional tasks that may be considered in providing menstrual care and to provide Handbook Section 30-757.14(j)(1) to clarify that additional time may be necessary under other service categories as a result of providing the "menstrual" care.

Factual Basis:

This section is amended to identify additional tasks that may be considered in providing care and assistance with routine "menstrual" care.

Sections 30-757.14(j)(2) through (j)(4) et seq.

Specific Purpose:

These sections are amended to specify the time guideline range to perform menstrual care tasks identified based on the specific needs of the recipient and to specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for "menstrual" care.

**Final Modification:**

**A technical change is made to the time guideline to change "0.080" by moving the decimal point which was inadvertently misplaced to "0.80" at Section 30-757.14(j)(3).**

Sections 30-757.14(k) and (k)(1) through (3) et seq.

Specific Purpose:

These sections are amended to: (a) identify additional tasks that may be considered in providing care for "ambulation;" (b) specify the time guideline range to perform tasks identified based on the specific needs of the recipient; and (c) specify the types of circumstances that should be considered in determining the appropriate amount of time within and/or outside of the established time range.

Factual Basis:

These amendments are necessary to implement the terms of Welfare and Institutions Code Section 12301.2, enacted by SB 1104 (Chapter 229, Statutes of 2004) pertaining to hourly task guidelines and exceptions for providing care for "ambulation." The amendment identifying additional tasks is made pursuant to the Department's general charge to implement interpret and make specific the services specified in Welfare and Institutions Code Section 12300.

**Final Modification:**

**As a result of testimony received, Section 30-757.14(k) is amended for clarity to include "getting in and out of the car" into the scope of task for "assistance for ambulation."**

#### Section 30-758.1 through .14 et seq.

##### Specific Purpose/Factual Basis:

These sections are repealed and no longer necessary because the time frequency policies specified at Sections 30-758.11 through .14 are incorporated into Section 30-757 with their applicable care categories and for clarity, consistency, and administrative ease.

#### Section 30-758.2 through .24

##### Specific Purpose:

These sections are repealed, as the policy is negated by new policy with proposed time guidelines established at Section 30-757.

##### Factual Basis:

The repeals of these sections comply with the requirements of SB 1104 (Chapter 229, Statutes of 2004) to enhance statewide uniformity in the assessment/service authorizations process and specifically with the intent of Welfare and Institutions Code Section 12301.2 which requires the establishment of statewide hourly task guidelines.

#### Section 30-758.3

##### Specific Purpose/Factual Basis:

This section is repealed and relocated to proposed Section 30-757.1(a)(5) to be incorporated with new time guidelines proposed in Section 30-757. The relocation is necessary for clarity, consistency, and administrative ease.

#### Section 30-758.4 through .411

##### Specific Purpose/Factual Basis:

These sections are repealed and relocated with minor modifications to proposed Sections 30-757.1(a)(3) and (6) to be incorporated with new time guidelines proposed in Section 30-757. The relocation is necessary for clarity, consistency, and administrative ease.

#### Handbook Sections 30-780.1(b) and (b)(1)

##### Specific Purpose/Factual Basis:

Handbook Section 30-780 (b)(1) is modified to incorporate "cleaning the bathroom," as an allowable "domestic" service, as this task was inadvertently left out of this Handbook section and reflects current policy specified at Section 30-757.11(c). Subsequent Handbook sections have been renumbered to allow for this addition. Also, modifications are made to Handbook providing care for "ambulation," Section 30-780.1(b), to delete obsolete cross-references and for grammatical consistency.

b) Identification of documents Upon which Department is Relying

SB 1104 (Chapter 229, Statutes of 2004)

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations will not result in any increased costs to local agencies.

d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact on Business

The CDSS is not aware of any significant adverse economic impacts that a representative business would necessarily incur in reasonable compliance with the proposed action.

f) Testimony

As a result of the May, 17, 2006 public hearing, oral comments were presented and written comments received. Oral comments were presented by Deborah Doctor representing Protection & Advocacy, Inc. (PAI), Karen Keesler representing the California Association of Public Authorities (CAPA) and Tamara Rasberry representing the Service Employees International Union (SEIU). Written comments were received from a coalition of IHSS partners and stakeholders comprised of CAPA, the California Foundation for Independent Living Centers (CFILC), the California Alliance of Retired Americans (CARA), PAI, Quality Home Care Coalition (QHCC), SEIU, and the United Domestic Workers of America/AFSCME (UDWA/AFSCME); Fred Nissen, staff attorney at PAI; Pamela Brown, a private citizen; Herbert M. Meyer, Chairman of the Governing Board of the IHSS Public Authority of Marin (IHSSPAM); Charlene Locke, Community Program Specialist II, California Department of Developmental Services (CDDS); John Stansbury, Executive Director of the IHSSPAM; Nicholas Feldman, of Dare to Dream Attendent Services; Kim E. Williams, Staff Paralegal of Bet Tzedek Legal Services (BTLS); and Margaret Dowling, Producer, KUSF, 90.3 FM "Disability and Senior News Report" with an attached letter from Fred Nissen, staff attorney at PAI to Brian Koepp, Chief, Quality Assurance Bureau, Adult Programs Branch, California Department of Social Services dated November 15, 2005.

The testifiers' general written and oral comments followed numerically by the specific comments and the Department's responses follow:

## **GENERAL COMMENTS**

### **General Comment #1 First Item:**

A coalition of IHSS partners and stakeholders comprised of CAPA, the California Foundation for Independent Living Centers (CFILC), the California Alliance of Retired Americans (CARA), PAI, Quality Home Care Coalition (QHCC), Service Employees International Union (SEIU), and the United Domestic Workers of America/AFSCME (UDWA/AFSCME) submitted testimony that mirrors, in part, much of what was commented to in General Comment #5 from Fred Nissen of PAI and Nicholas Feldman of Dare to Dream Attendant Services.

The testimony submitted is as follows: "SB 1104, enacted in 2004, established an IHSS Quality Assurance Initiative. One of the most complex requirements of SB 1104 is for the California Department of Social Services (CDSS) to develop statewide hourly task guidelines and instructions to provide counties with a standard tool for consistently and accurately assessing IHSS service needs and authorizing service hours to meet those needs.

"The statute requires that hourly task guidelines be based on data obtained by direct field testing and observation. It states: 'The guidelines shall specify a range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient'.

"CDSS staff has made substantial efforts to obtain data and solicit input from stakeholders to develop hourly task guidelines. Numerous workgroup meetings have been held and a great deal of effort has gone into the development of the regulations to establish hourly task guideline ranges. CDSS has targeted August 30, 2006 as the implementation date for these regulations. We recognize that regulations need to be enacted and that they may actually benefit consumers if done correctly.

### **Response:**

CDSS thanks all testifiers for their comments for consideration. CDSS also appreciates testifiers' acknowledgement of the challenges CDSS faced to meet its mandate imposed by Welfare and Institutions Code (WIC) Section 12301.2 to establish and implement Hourly Task Guidelines (HTGs) and instructions to provide counties with a standard tool for accurately and consistently assessing service needs and authorizing time and to have regulations adopted by June 30, 2006.

CDSS established the HTGs Workgroup in February 2005 to gain input from a broad scope of stakeholders in CDSS' development of the HTGs. In order to allow sufficient time for the regulatory process, the targeted date to have an HTG policy established with draft regulations was November 2005. Nine HTGs Workgroup meetings were held from February to November 2005, where CDSS discussed issues, presented data and analysis, and discussed approaches to best utilize data.

**As testifiers' acknowledged, CDSS made substantial efforts to obtain data and solicit input from counties and stakeholders to develop hourly task guidelines (WIC Section 12301.2(a)(1)):** The HTGs development process encompassed gathering and analyzing data from a variety of sources where data was available in the time frames to meet the regulations adoption deadline required by statute. The development began by the Workgroup identifying which IHSS service categories needed new guidelines established and then identifying a clear scope of tasks associated with those care categories with the input of all workgroup members including County Welfare Directors Association (CWDA) social worker subject matter experts who conduct IHSS needs assessments, various provider unions representatives, providers/consumers (also referred throughout as recipients), and other state and county staff. Twelve service categories were identified by the HTG Workgroup as needing time guidelines, and there was general consensus on the scope of tasks associated with those categories—given the statutory restrictions which define the program service categories. Next we began to gather any pertinent data for consideration of time per task ranges, at which time CDSS asked for all Workgroup participants to provide contact information to CDSS to obtain pertinent data and/or to bring back any data they could obtain for consideration.

**CDSS efforts to consider existing utilizations patterns, outcomes associated with different levels of need, and the need to avoid cost shifting to other governmental programs (WIC Section 12301.2(a)(3)):** During this process, CDSS obtained any available data regarding IHSS time per task guidelines from all 50 states regarding their IHSS practices, as well as from a California home health care agency, and from California's service authorization trends from the Case Management Information and Payrolling System (CMIPS) that is the sole IHSS payment data source. Additionally, CDSS conducted outreach efforts to gain input from IHSS caregivers (providers) and consumers (recipients) through the use of surveys jointly developed with the assistance of CAPA regarding services and time, and through focus groups. CDSS conducted two focus groups with IHSS seniors in Fresno and San Diego counties to evaluate any differences in IHSS seniors' needs versus the IHSS disabled population; and in joint efforts with CDSS, the California State University, Sacramento' (CSUS') Institute of Social Research (ISR) conducted four focus groups with the IHSS consumers and providers in general to gain their perspective about services and time. CDSS also made numerous attempts to gain information from occupational and physical therapists associations during the data gathering phase and asked the HTGs Workgroup for any contacts in these fields on several occasions, but was unable to ascertain any information.

After careful analysis of all data gathered, it was determined that the data from CMIPS was the best data available for consideration to meet California's unique IHSS program and population needs. Other data gathered was either too clinical and not based on the individualized circumstances that must be considered in a home setting to allow individuals to remain safely in their own homes and avoid institutionalizations as required by California's regulations; and/or not based on an impairment ranking system similar to California's; and/or reflected time authorizations that were much lower than California's.

Given the mandated timeframes to develop the HTGs, the intent to achieve statewide equity, and the unique differences of California's program requirements from other states, CMIPS data was determined to be the best data source to utilize in the development of HTGs. Therefore, it is CDSS' position that our data gathering efforts and conclusion to use CMIPS as the primary data source to establish HTGs—which includes “time exceptions” to meet every individual's unique needs—is the most reasonable and valid approach to meet the requirements of WIC Section 12301.2.

**Determination of a normal range of time (WIC Section 12301.2(a)(2)):** The next phase of Workgroup meetings was concentrated on evaluating statistical variations of CMIPS data to determine “a normal range of time” for tasks as authorized in CMIPS. Due to the variance in the distribution of needs' values, with the assistance of Ernie Cowles, PhD, of CSUS' Institute of Social Research (ISR); the use of the Interquartile methodology for each of the 12 service categories was recommended to best address this statistical distribution issue. The Interquartile represents the central half of the values when arraying all values in order from the smallest to the largest, disregarding the values below the 25<sup>th</sup> percentile and above the 75<sup>th</sup> percentile. CDSS was faced with the challenge of identifying a range where a majority of needs should fall, as the “normal range of time” and not have the range be so broad that it would fail to provide an adequate guide for consistency and equity in service authorizations. The use of the Interquartile range was representative of a majority of service authorizations (50% or more), and the use of an Interquartile range by functional impairment rankings (Functional Index (FI) Ranks) could provide the consistency needed to promote equity by linking time authorizations to similar levels of function impairment rankings. Based on the February 2005 CMIPS data utilized to calculate the Interquartiles, 61% of the values were in the proposed Interquartiles. Consequently, CDSS anticipates that more than 50% of the values will be in the proposed Interquartile since many time authorizations were just slightly outside without any statewide guide. Other statistical variations were not selected to determine the “normal range of time” because they were either too restrictive to include enough of the population's needs or too broad to provide a guide that would result in any degree of statewide consistency as required by the statute.

**Although WIC Section 12301.2 did not require a field test of the proposed HTGs, CDSS agreed to field test the HTGs:** Initially, the field test was to include both the applicability of the new time standards to cases in the test and the scope of tasks prior to finalizing the regulations. CDSS is confident in the proposed policy which provides for exceptions to adequately meet every individual's needs, but also agreed to conduct a preliminary field test to identify any surprising issues and/or missing elements that needed amending prior to finalizing the regulations. The field test occurred in January, 2006, simultaneously as the regulatory process continued.

**General Comment #1 Second Item:**

"The following are our issues and concerns with the proposed regulations on hourly task guidelines.

**"Issues about the CMIPS data:** IHSS Coalition partners and stakeholders have expressed concerns throughout the process about the use of CMIPS data to determine the ranges of time for the tasks within the proposed regulations. This CMIPS data has been acknowledged to have flaws and does not accurately reflect hours of need. Nevertheless, CDSS continued to insist on using CMIPS data in determining the "normal" range of hours for each task.

**Response:**

CDSS does not agree with testifiers' characterization that CMIPS data, which is the sole data source for IHSS payments, does not accurately reflect hours of needs. CDSS recognizes that data in CMIPS is as good as the quality of needs assessments conducted statewide and—as with any practice—some may not always accurately reflect needs, and therefore, “good assessment practices” are being addressed in Social Working Training as part of the larger quality assurance measures. However, there is no factual basis to contend that the statewide assessment practices as a whole reflect inaccurate hours of need. The CMIPS data is the sole data source for, and is accurate in, identifying the number of service hours authorized for all recipients statewide. CDSS acknowledges the primary issue of inconsistency from county to county in the methodology to translate services into time, and this is the primary issue the development of statewide time standards (including exception criteria) is to address.

Further, CDSS does not agree with testifiers' comment that WIC Section 12301.2 requires that hourly task guidelines be based on data obtained by direct field testing and observation since the statute does not provide specific language to that effect or resources to explicitly conduct such activities. To the contrary, it is CDSS' position that WIC Section 12301.2(a)(3) more clearly supports the use of CMIPS as the primary data source to establish time per task guidelines based on current authorization trends since CMIPS is the primary data source which enables an evaluation of “existing utilization patterns” within the scope of California's program regulations. Although CDSS agrees that the statute is not prescriptive to require only the use of CMIPS and does provide for consideration of other "viable" options, CDSS evaluated other options to the extent possible and none were found to be viable. For these reasons no change to the proposed regulations were made as a result of this testimony.

**General Comment #1 Third Item:**

**"Field Test & Consumer Survey Concerns:** IHSS Coalition partners and stakeholders requested that a field test be conducted to obtain actual data that reports the actual range of time (taking into consideration "good days" and "bad days") necessary to ensure the safety and independence of consumers. The field test was conducted in six volunteer counties in January 2006 and a survey was conducted to solicit input from the consumers that were part of the field test. We are very concerned about the summary of the survey findings that reports, as follows:

**8a. Adequate number of hours listed on NOA (out of 288 completed surveys):**

**Yes 64% . No 32%**  
**No response given 4%**



"It is nothing less than alarming to receive this information that indicates that almost a third of the consumers that were part of the field test do not believe that they received sufficient hours and that the proposed regulations may not comply with the statute to 'specify a range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient'. We respectfully urge that CDSS specify within the proposed regulations what steps will be taken to insure that consumers receive sufficient hours through the assessment process for the tasks to be performed in compliance with state law.

**Response:**

As with any new regulations, CDSS agrees that it is essential to ensure that the new policies imposed by the regulations are not misapplied. The proposed time guidelines explicitly specify that exceptions to the time guidelines shall be made when necessary to ensure the recipients can maintain an independent living arrangement and/or remain safely in his/her home (MPP Section 30-757.1(a)(3)). CDSS has also added language about the application of the time guidelines and exceptions to provide additional clarity at proposed Sections 30-757.1(a), (a)(3), and (a)(6) in response to testimony received. Additionally, CDSS will issue explicit instructions to counties regarding the necessity to ensure needs assessments remain individualized and that exceptions are applied when an individual's need requires more or less time than the time guideline. Other CDSS efforts to ensure appropriate applicability of the proposed time guidelines include thoroughly addressing the appropriate applicability of the time guidelines in Social Worker Training, Phase III, commencing in August 2006. CDSS will also be conducting general oversight through quality assurance monitoring and will be discussing other specific follow-up activities with stakeholders with the first meeting commencing at periodic Stakeholders Meeting to be held in August 2006.

It is CDSS' intent by the establishment of these regulations to achieve accurate and equitable service authorizations which CDSS has determined will ultimately benefit all consumers. CDSS has taken the necessary steps in establishing the guidelines to ensure that they "specify a range of time normally required for each supportive service task...." The steps established in the regulations for assessing needs and determining exceptions will ensure that consumers receive sufficient hours through the assessment process for the tasks to be performed within the statutory program limitations. For these reasons CDSS made no additional changes to the proposed regulations as a result of this testimony.

**General Comment #1 Fourth Item:**

**"Request clarification on the timelines and approval process for exceptions** that would allow consumers to receive hours that are outside of average range of time. CDSS reports that 'of the 3,556 total needs assessed for the 573 recipient sub-sample (recipient needs can be in all 12 service categories) over half (54) percent of the total needs fell in the proposed ranges and 46 percent fell outside.' This means that almost half of the total needs fell outside the established ranges. For the consumer to get the hours which the social workers say they need, social workers will have to request exceptions.

"For this sample of 573 consumers, social workers would have had to document 1,636 explanations for exceptions. In the test, social workers documented 142 exceptions because documenting exceptions is NOT a current requirement.

We are requesting that the proposed regulations provide clarification about how exceptions will be processed by IHSS supervisors after the social worker has completed the assessment/reassessment.

**Response:**

Regarding the testifiers' interpretation that based on the field test sample of 573 consumers, social workers would have had to document 1,636 explanations for exceptions—CDSS reiterates that since the proposed time standards were not applied to cases in the field test, no such conclusions about how many exceptions would or would not have resulted can be made.

In response to testifiers' request for clarification of the exception process in the proposed regulations, CDSS has added Handbook Section 30-757.1(a)(6)(B) to clarify the exception process in response to this testimony.

**General Comment #1, Fifth Item:**

**"Tone of Proposed Regulations:** During the workgroup meetings, CDSS staff has repeatedly said that the purpose of establishing HTG is not to lower consumers' allotted hours. In fact, CDSS staff has said that, in some cases, hours may be increased as a result since the object is to have uniform guidelines. However, the proposed regulations, in the sections titled 'handbook,' which contains mostly examples, emphasize how social workers can reduce a person's hours, rather than increase them. We would urge that the examples be changed, and/or other examples be added, to include ways to increase hours."

**Response:**

CDSS does not agree with the testifiers' general comment that the tone of the regulations emphasized how to determine less hours. The exception criteria cited in the regulations to provide time outside the time guidelines heavily emphasizes circumstances to alert workers that more time may be necessary rather than less time (39 more, compared to 8 less, and 3 neutral). Additionally, Handbook illustrations are balanced to reflect situations where time may be increased and decreased, with the exception of one example in 'meal cleanup.' Consequently, CDSS will change the emphasis in the "meal cleanup" Handbook example to illustrate more time rather than less at Handbook Section 30-757.132(c)(2)(A) in response to this testimony. This change will result in four examples illustrating more time, 4 less time, and 1 neutral.

**General Comment #2:**

Herbert M. Meyer of IHSSPAM testified that "[a] Consumer Survey was conducted in April, 2006 concerning the IHSS recipients who were initially assessed or reassessed in January, 2006 using the proposed Hourly Task Guidelines. Over 200 of the Consumers sent back responses from the approximately 1200 assessed Consumers. Copies of the Consumer Surveys were made available to the stakeholders during the past two weeks. I personally

reviewed 95 of the surveys and did not have time to evaluate the balance of surveys, which were just made available this week. The surveys reviewed gave very important information regarding their response to the actual number of hours granted. More time is required to accurately assimilate the Consumer Surveys.

#### Request for Regulations to Require Periodic Consumer Surveys.

"To make it possible to comply with the implementation of SB 1104 and the Quality Assurance Initiatives, the regulations should be modified to include a requirement that periodic consumer surveys should be initiated by the Department Of Social Services. Also, it would be important to have a survey completed by January, 2007 which would report on the progress being made with the new Hourly Task Guidelines. The Information from the Survey would be made available for the Assembly Budget Committee meeting which has been scheduled for February, 2007.

"The results of the surveys will be extremely important to the consumers and the Department Of Social Services management personnel in the implementation of the Quality Assurance initiatives."

#### **Response:**

Although CDSS agrees that conducting surveys is a useful tool to assess consumers' (recipients') perspective about the services they receive which could be used to determine how to improve the delivery of services within the scope of the regulations, CDSS does not agree with the testifier's comment that periodic surveys should be a regulatory requirement at this time. CDSS will specifically address post-implementation follow-up activities regarding the impact of the proposed hourly task guidelines after consideration of input from all stakeholders and appropriate evaluation of administrative functions and staff time needed to perform these tasks. For these reasons no changes to the proposed regulations were made as a result of this testimony.

#### **General Comment #3 First Item:**

Maggie-Dee Dowling, testified that "CIMPS data collection needs to be replaced with a competent data collection system. This system is fraught with serious and compromising errors. Consistently, in every meeting I have participated in this factor has been brought to the table repeatedly. The Department has refused to accept this issue. We must not start a policy to restructure any part of this essential life-sustaining program with a data collection system that provides erroneous data information. THIS is the time to make the appropriate changes.

"Serious concerns are evident in trial counties:

"1/3 of the consumer's needs were not met in IHSS hours provided. This will jeopardize the health and safety of consumers. Furthermore, the lack of properly assessed IHSS hours will cause many consumers to be institutionalized. I thought that it was the Department's wish to divert consumers from long term care institutions not to make it a greater possibility of admission. This flies in the face of the intent of the U.S. Supreme Court's decision of Olmstead vs. L.C.-1999

**Response:**

See response to General Comment #1, Second Item regarding CMIPS. Also, the provision of IHSS has not been determined to be in violation of the Olmstead decision. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #3 Second Item:**

"There are absolutely no safeguards for consumers at the state level when counties do not perform a fair assessment. There should be a state-level consumer hot line which will meet immediate needs of consumer lost hours. Fair hearings take months to be heard—and most consumers fear contesting lost hours thinking that the Department will retaliate. The fear is well founded statewide. There should be an Ombudsman system, in place.

**Response:**

CDSS does not agree with testifiers that the current system does not have safeguards in place. The State's Fair Hearing process is the appropriate administrative process to safeguard IHSS recipients (consumers) from incorrect determinations in their cases by ensuring that they get an independent review of their specific case determinations regarding their IHSS benefits. The other items urged by this testifier are outside the scope of these regulations and beyond the mandate given in the statute at issue. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #3 Third Item:**

"There is simply too much that is being put under, "Domestic" which equates to 6 ours a month. This \*must\* be revisited. Such things as: cleaning counters after a meal, cleaning a stove after a meal, cleaning a consumers elaborate power wheelchairs—mine is a tilt and recline which can take a \*full\* hour to clean.

**Response:**

CDSS agrees with testifier's comment that cleaning related to "meal cleanup," such as cleaning a stove or counter should not be included in "domestic." Consequently, CDSS had added these tasks to "meal cleanup" in Section 30-757.132.

However, CDSS does not agree with testifier that cleaning wheelchairs should not be considered under "domestic." Based on the permissible scope of program services, "cleaning wheelchairs would need to be considered as "miscellaneous domestic services," specified at Section 30-757.11(k). In response to testifier's concerns about the "domestic" time guideline not providing sufficient time for this task, additional time can be granted as an exception in accordance with Section 30-757.11(k)(1) if the need for cleaning requires more time than the time guideline, which includes a variety of other "domestic" tasks. For these reasons no additional changes to the proposed regulations have been made as a result of this testimony.

**General Comment #3 Fourth Item:**

"While it is my opinion that the state has made an effort to tackle many of the issues which stakeholders have brought to the state's attention, there needs to be some serious revisiting of the issues. Some other issues are cultural diversity issues. Service Animals have been totally ignored despite Protection and Advocacy's letter to the Department. [provided below] Service Animals who are registered with both the consumer's county AND in the California State Assistance Dog Program and other Service Animals \*\*must\*\* be cared for however, the Department has ignored this issue entirely.

**Response:**

Regarding testifier's comment to include service animals as a covered service, this request is beyond the scope of authority provided at WIC Section 12301.2, which provides for these regulations. The statute mandates the development of guidelines for supportive services tasks. Since no new tasks were specified, the mandate must be limited to existing tasks. Care of service animals is not an existing task. The development of guidelines for this task would be outside the permissible scope of these regulations. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #3 Fifth Item:**

"When wages go up for the IHSS providers, hours for the consumer are often decreased to reach a greater cost neutrality. The cost of a nursing home continues to go up, yet the cost neutrality does not. I function at \$70,000 annually. When the wages go up in my county by \$.50 my hours are decreased. I have just been told that July 1, 2006 I will lose some of my hours—"...but do not worry about this until July 1; you will receive a letter from us making the changes," my RN case manager explained. Even worse, one year after I entered the program, consumers on the same program were given half of the annual cost factors at \$35,000. They are not entitled to the same number of hours and cost neutrality as I am. This will surely incarcerate numerous consumers in long term nursing facilities.

"With the greatest respect for the Department and their countless hours of working with us—we do need to revise many of the issues that have been ignored \*before\* this effort becomes a reality."

**Response:**

The testifier's comments are beyond the scope of WIC Section 12301.2, which provides the authority for the proposed regulations. For this reason no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #3 Sixth Item:**

Ms, Dowling also included a letter from Fred Nissen, staff attorney at PAI to Brian Koepp, Chief, Quality Assurance Bureau, Adult Programs Branch, California Department of Social Services dated November 15, 2005. The body of the letter follows.

"Please accept this letter as a supplement to Protection & Advocacy, Inc.'s (PAI) comments on the draft time for task regulations circulated before the November 3, 2005 meeting of the IHSS Hourly Task Guidelines Workgroup. In addition to our comments submitted on November 10, 2005, we would like to recommend language in section 30-757.14(i) regarding care of and assistance with prostheses. In subsection (i)(2), please add the following: "Does the consumer have a service animal?" In addition, in subparagraph (i)(3), please add the following exception: 'If the consumer has a service animal and needs assistance caring for the service animal (e.g., feeding, bathing, walking outside to relieve itself, etc.).'

"Just like a brace or wheelchair, a person with a disability who needs a service animal to be independent may also need help in 'maintaining and cleaning' the service animal. In many situations, if they do not have a provider that will 'maintain and clean' the service animal by feeding it, cleaning it, helping it relieve itself, etc., that person will not be able to live independently and safely in their own home, which is the goal of the IHSS program. In addition, PAI has been successful in getting administrative law judges to award people hours for caring for a service animal under the category of 'care of and assistance with prostheses.'

"Please consider including care of a service animal in the time for task guidelines regulations. Please feel free to contact me if you have any questions."

**Response:**

See response to General Comment #3, Fifth Item regarding service animal care.

**General Comment #4 First Item:**

John Stansbury of IHSSPAM testified that "[t]hese suggestions are offered to bring the proposed hourly task guideline regulations more closely in line with Welfare & Institutions Code (W&IC) §12301.2 (the statute).

"Since by definition, guidelines are not meant to cover all contingencies, it is important that the overall goals of the IHSS assessment be made clear to social workers. In cases not clearly covered by the guidelines, they will know the general philosophy to apply.

Rather than paraphrase the statute or use words not in the statute, the regulations should track the actual wording of the statute in the order stated.

"Attached to this letter is a suggested statement which will give social workers a necessary tool to accurately and consistently assess service needs.

**Statutory Goal: Accurate and Consistent Assessments**

"The statute specifies the twin goals of *accurate* and *consistent* assessments. Since the statute makes accurate and consistent assessments a key goal, the regulations should also.

"The goals are not mentioned in the regulations at all. The handbook mentions 'equity' stating: 'Documentation of the reason for an exception will provide necessary data to audit the effectiveness of each guideline in terms of : 1) Achieving equity in service authorizations; and 2) Evaluating program costs.'

*Accuracy* is important because recipients are legally and morally entitled to receive sufficient hours to do the required tasks, but no more.

### **Actual Times**

"The department acknowledges the statute requires assessment of *actual* times required to do the task. However, the regulations emphasize times within guidelines and do not specifically require that social workers actual times required by the recipient.

### **Statutory Goal: Ensure Health, Safety and Independence of the Recipient**

"The statute specifies an overarching goal. It provides in part:

"The guidelines shall specify a range of time normally required for each supportive service task to ensure the health, safety and independence of the recipient.

"However, the regulations bury these goals in a discussion of 'exceptions' thereby misrepresenting the clear meaning of the statute. Proposed regulation [Section]30-757.1(a)(1) provides:

"Exceptions to the hourly task guidelines identified in this section shall be made when necessary to enable the recipient to establish and maintain an independent living arrangement and/or remain safely in his/her home or abode of his/her own choosing.

"The proposed regulation changes the meaning and purpose of the statute in two ways:

- Safety and independence are mentioned only in the context of 'exceptions' and not as an overarching statutory purpose.
- Limiting the goal of 'independence' to an 'independent living arrangement' misstates the clear statutory intent. For example, encouraging a recipient who suffered a stroke to do things for herself fosters *independence* (as opposed to learned dependence) yet has little relationship to whether or not she can maintain an independent living arrangement.

### **Response:**

CDSS thanks the testifier for his comments. CDSS has addressed testifier's concerns to clarify statutory goals for consistent and accurate assessments and for authorizing time per tasks that ensures the health, safety and independence of the recipient by adding language to this effect at Section 30-757.1(a). The italicized language changes have been added to Section 30-757.1(a) to read as follows:

"(a) For services in this section where time guidelines are specified, the services shall be subject to the specified time guideline unless the recipient's needs require an exception to the guideline. When assessing time for services (both within and outside the time guidelines), the time authorized shall be based on the recipient's individual level of need necessary to ensure his/her health, safety, and independence based on the scope of tasks identified for service. In accordance with Welfare and Institutions Code Section 12301.2, the dual purpose of the guidelines is to provide counties with a tool for both consistently and accurately assessing service needs and authorizing time."

#### **General Comment #4 Second Item:**

##### **"Exceptions" vs. "Service Needs"**

"The statute sets out two categories of recipients — those whose service needs fall within the guidelines and those whose service needs fall outside the guidelines. The statute contemplates that service needs falling outside the guidelines are a *normal part of the assessment process*

"Indeed, the departmental used a statistical measure known as 'interquartile range' in defining the range of time in the guidelines. The interquartile is the middle 50% of the cases. Thus, the statistical method assumes that 50% of the service needs will fall within the guidelines and 50% will fall outside the guidelines.

"However, the proposed regulation misstates the statutory intent. Instead in talking in terms of 'service needs' the proposed regulation uses the term "exception" which implies "unusual", as in the phrase, 'There is an exception to every rule.'

"Exceptions should not be exceptional. By using the wording of the statute ('service needs') the misleading implication that exceptions are unusual will be avoided.

"A great concern of consumers is that the ranges in the time guidelines will become *de facto* ceilings and few exceptions will be assessed. That will surely happen unless the regulations make clear that service needs falling outside the guidelines are to be expected as a normal part of the assessment process.

"Using the concept of "exceptions" has practical effects:

- "If social workers think exceptions are unusual, they will be less likely to comply with the statute and assess a service needs that fall outside the guidelines. The field test conducted by the department confirms this fact. There were far fewer 'exceptions' than the 50% one would expect.
- "For a number of years Marin County has been using their own task guidelines which specify a range of times for each task. Experience has shown that exceptions are difficult to obtain. It is not a simple matter of documenting the actual time required. Social workers are discouraged from going outside the time for task guidelines. Supervisors rarely approve an exception.



## **Response:**

CDSS has addressed the testifier's issues regarding clarity about the appropriate applicability of time guidelines with the addition of language in Section 30-757.1(a) as specified in the response to Comment #4, First Item. To specifically address the testifier's concerns about making it clear that "exceptions" are "a normal part of the assessment process," Section 30-757.1(a)(3) has added clarifying language (see italicized change) to read as follows:

- (3) Exceptions to the hourly task guidelines identified in this section shall be made when necessary to enable the recipient to establish and maintain an independent living arrangement and/or remain safely in his/her home or abode of his/her own choosing and shall be considered a normal part of the authorization process.

It is CDSS' position that these changes and the fact there are various reasons cited as "exception criteria" to provide time outside the time ranges listed in the regulations with language "not limited to" appropriately address that exceptions are not limited to a few "exceptional" circumstances. Additionally, it is CDSS' position that the word "exception" is the appropriate term to identify criteria for granting time outside the "normal range of time" based on one of its meanings: *a case to which as rule, general principle, etc., does not apply...*

CDSS would also like to address that the testifier's comment about there being fewer the 50% of time guideline exceptions in the field test, is not germane for two reasons: (1) the proposed time ranges were not applied to cases in the field test, so the workers would have no reason to apply a time exception; and (2) the Interquartile methodology used does not always result in a 50/50% split being in/out of the Interquartile. As stated in General Comment #1, First Item, the primary reason CDSS utilized the Interquartile methodology was to address the statistical outliers of the IHSS population's variance in needs. Consequently, 61% of the entire statewide caseload of 360,000 used to calculate the Interquartile for the proposed time guidelines fell within the Interquartile. Additionally, it is expected that the percentage of cases falling in will increase based on the use of guidelines that clearly identify tasks and normal time ranges associated with services, and the fact that several values were just slightly outside the proposed guidelines. For these reasons no additional changes to the proposed regulations have been made as a result of this testimony.

## **General Comment #4 Third Item:**

### **Incompetence or Inefficiency**

"The department acknowledges the statute requires assessment of *actual* times. There is no statutory basis for proposed regulation [Section] 30-757.1(a)(5) relating to inefficiency or incompetence of the provider. The reference should be deleted since it directly conflicts with the concept of *actual times*.

"In a normal distribution some workers will be more efficient and some less efficient. An elderly parent or spouse caring for his/her family member may not be as efficient as a younger, stronger person. Yet following the guidelines, a social worker would assess actual time for the more efficient provider and something less than actual time for the less efficient — an inequitable result.

**Response:**

CDSS does not agree with the testifier's comments. The proposed time guidelines assess actual time needed based on the recipient's functional capacity to perform tasks in their living environment. Contrary to the testifier's comment, the recipient does not get more or less time based on the provider's efficiency, and Section 30-757.1(a)(5) provides clarity to this effect. The language at Section 30-757.1(a)(5) was relocated from current Section 30-758.3, and remains unchanged by the proposed time guide regulations. These regulations are not proposing to change this existing rule and the statute being implemented does not authorize such a change. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #4, Fourth Item:**

**Broaden Exception Criteria: Combativeness**

"It is neither possible nor desirable to list all possible exceptions. But the listing should at least accurately illustrate the range of exceptions. The exception for combativeness is not sufficiently inclusive. There are many mental, emotional and cognitive issues which might require more time. It is suggested the exception be broadened to read: 'If the recipient has a cognitive, mental or emotional condition such as combativeness which may require more time.'

**Response:**

CDSS does not agree with testifier. The current language "if the recipient is combative" is broad and this change is not necessary. For this reason no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #4, Fifth Item:**

**Universal Precautions**

"The statute requires the guidelines account for time needed for universal precautions. However, when universal precautions are mentioned in the guidelines, they are simply a factor to be considered "as appropriate".

"The regulations should make clear that universal precautions are *required* whenever there is a possibility of contact with bodily fluid. Rather than list universal precautions merely as a 'factor to be considered', they should be moved up and listed as part of the task definition. "For example, proposed Reg. (sic)[Section] 30-757.14(d) (routine bed bath) mentions time for universal precautions 'as appropriate'. Good medical practice *requires* adherence to universal precautions for a bed bath.

**Response:**

CDSS agrees with the testifier that regulations should clarify the necessity to practice universal precautions, why, and identify what they are in a general sense. CDSS has provided this general information at Handbook Section 30-757.1(a). However, CDSS does not agree that universal precautions should be included in the task definitions.

The National Center for Disease Control establishes and updates protocols regarding universal precautions. CDSS used the language “universal precautions as appropriate” when considering time because CDSS is not the appropriate authority on “good medical practices” and/or the extent to which universal precautions should be applied.

**General Comment #4, Sixth Item:**

**Conclusion**

"Fair and accurate hourly task guidelines will:

- Serve the human needs of IHSS recipients
- Serve the fiscal needs of the state, and
- Keep IHSS recipients out of institutions."

**Response:**

The current program scope considers these factors when establishing regulations.

**General Comment #5 First Item:**

Fred Nissen, staff attorney at PAI testified that "Protection & Advocacy, Inc. (PAI) is the federally mandated protection and advocacy system for people with disabilities in California. Below are PAI's comments to the proposed In-Home Supportive Services (IHSS) Hourly Task Guidelines (HTG) regulations. These same comments, in part, are parroted in General Comment #1 by a coalition of IHSS partners and stakeholders comprised of CAPA, CFILC, CARA, PAI, QHCC, SEIU, and UDWA/AFSCME and Nicholas Feldman of Dare to Dream Attendant Services in submitted written testimony.

**Statutory Background**

"As part of the IHSS Quality Assurance Initiative, SB 1104 requires the California Department of Social Services (CDSS), in collaboration with stakeholders, to develop hourly task guidelines for the IHSS program. The HTG is supposed to consist of a “range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient.” Welf. & Inst. Code § 12301.2(a)(2). Once the regulations adopting the HTG are adopted, social workers are required to use them when assessing individuals’ needs and awarding hours. Welf. & Inst. Code § 12301.2(b). If a recipient needs time above or below the HTG range for a given task, an exception may be made, but the social worker must document the need for the exception. Welf. & Inst. Code § 12301.2(c)

"The stated purpose of SB 1104’s requirement of the development of HTG, as reiterated several times by CDSS staff during stakeholder workgroup meetings, is to lessen current discrepancies in the number of hours awarded county-by-county, not necessarily reflective of need. *See* Welf. & Inst. Code § 12301.2(a)(1).

### **Inaccuracy of Data Gathering and Invalidity of Proposed Ranges**

"CDSS used information from the Case Management Information and Payrolling System (CMIPS) about how many hours of services recipients receive to determine the proposed ranges. Each range is supposed to be a "range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient." *See* Welf. & Inst. Code § 12301.2(a)(2). This data, according to CDSS does not accurately reflect hours of need. Nevertheless, CDSS continued to insist on using CMIPS data in determining the "normal" range of hours for each task.

"At this point, we cannot determine whether the proposed ranges are accurate because we do not have accurate data on actual hours of need. The CMIPS data has not been validated because there has not been a real-time study.

"PAI and other advocacy organizations suggested that CDSS conduct a real-time survey of how long it takes to complete certain tasks, such as the survey that was done in the State of Washington. The State of Washington took 1,000 consumers picked at random and put someone in their homes for 72 hours to keep track of their care needs and how long each task took to perform. This suggestion was not heeded because CDSS said that a sample of 1,000 consumers was too small compared to the 100% of consumers that are reflected in the CMIPS data. Therefore, it is apparent that CDSS prefers to use *inaccurate* data from all of the consumers rather than real-time data gathered by actually observing a sample of 1,000 consumers.

#### **Response:**

See responses to General Comment #1.

#### **General Comment #5, Second Item:**

#### **Overall Effect of the Proposed Regulations on Accuracy of Assessments**

"Based on the methodology used by CDSS to develop the proposed ranges, even assuming the CMIPS data was accurate, approximately 50% of the assessed tasks would necessarily fall outside the ranges. In order to come up with the ranges, CDSS took the interquartile range of authorized hours of each task for each functional index rank.<sup>1</sup> The interquartile range is a statistical term which means the difference between the 75<sup>th</sup> percentile and the 25<sup>th</sup> percentile. In other words, the top 25% and the bottom 25% are taken out of each category, with the remainder becoming the proposed ranges. That means that the proposed ranges only encompass 50% of the authorized hours. Again, there is no showing that this determination is based on actual need.

"As CDSS staff correctly asserted throughout the planning process, counties are permitted to award hours outside of the proposed ranges. *See* Welf. & Inst. Code § 12301.2(c). In order to authorize hours outside of the proposed ranges, however, social workers must "document the need for the authorized service level." Welf. & Inst. Code § 12301.2(d).

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<sup>1</sup> PAI objects to establishing ranges by functional index rank. *See infra* at page 5.

"However, even though the goal of the HTG is to create uniformity in how IHSS hours are assessed and authorized, there is not a uniform procedure for granting exceptions. We learned at Phase II of the IHSS Training Academy<sup>2</sup> that each county will establish their own procedure on granting exceptions to the proposed ranges. In some counties, supervisors will have to approve changes. In other counties, social workers will be able to grant exception as long as there is documentation. Allowing different procedures to be used in each county will clearly result in a lack of uniformity.

"Throughout the process, we consistently expressed concern that the exception process would be too onerous to the already overworked social workers and that, as a result, they might be reluctant to grant, or ask for, an exception. Since we already know, social workers have such huge caseloads in some counties that annual reassessments are not getting done and new applicants are waiting six months or more to be assessed, in direct violation of federal and state law, it is foolhardy to believe that many social workers will be willing to do extra paperwork if they can avoid it.

"On many occasions, Erik Fair, California Welfare Directors Association's (CWDA) liaison to the IHSS HTG Workgroup, said the fact that social workers will need to document the need for exceptions will not create more work for social workers because they already have to provide such documentation. However, there is evidence to the contrary. In January of 2006, CDSS did a field test of the proposed regulations in six counties.<sup>3</sup> According to documents that CDSS prepared, of the 3,556 total needs assessed (consisting of 573 consumers), 1,636 fell outside the ranges. In the test, social workers documented reasons for only 142 of them. CDSS and CWDA explain this discrepancy by saying that the social workers were not required to document exceptions because they were not applying the proposed ranges.<sup>4</sup> Although we agree that the social workers should not have applied the proposed ranges, the field test nonetheless makes it clear that the proposed regulations would add a lot of additional work to already overworked social workers if a consumer needs time outside the proposed ranges, thereby giving social workers incentive not to recommend or authorize hours outside the proposed ranges.

"In addition, as stated above, there are counties with months-long backlogs of IHSS applications, which are regularly violating the law because their social workers are overloaded. Adding this additional burden can only compound the problem.

### **Response:**

Regarding the testifier's comment on the accuracy of assessments, CMIPS data, and the Interquartile methodology, see responses to General Comment #1 pertaining to CMIPS and the Interquartile.

To specifically address the testifier's comment about 50% needs resulting in "exceptions based on the Interquartile methodology, as previously stated in General Comment #4, the Interquartile methodology used does not always result in a 50/50% split being in/out of the Interquartile. The primary reason CDSS utilized the Interquartile methodology was to

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<sup>2</sup> The IHSS Training Academy, established pursuant to SB 1104, provides training to IHSS social workers.

<sup>3</sup> The validity of the field test is discussed below.

<sup>4</sup> CDSS was correct in not providing social workers with the proposed ranges because, otherwise, people would have been subject to the HTG prior to the enactment of the regulations, which would have violated SB 1104.

address the statistical outliers of the IHSS population's variance in needs. Consequently, 61% of the entire statewide caseload values used to calculate the Interquartile for the proposed time guidelines fell within the Interquartile, and it is expected that the percentage will increase since several values were just slightly outside.

CDSS does not agree with the testifier's comments concluding that the exceptions will not be granted because they will create too much work. These comments are unfounded. The exception process can include a few words (i.e., frequent urination "x" times daily, etc.) or citing the regulation that identifies the specific exception—which is readily available to workers by use of the Task Tools. Further, documenting the basis of service authorizations is already part of current practice while conducting assessments. Workers in the field test reported that the use of the Task Tool (which included identifying reasons for exceptions, but not proposed time standards) was resourceful and did not increase their workload.

CDSS also disagrees with the testifier's conclusion that because internal county review procedures differ, statewide uniformity in the application of exceptions can not be achieved. The uniformity is driven by the State regulations that provide uniform criteria for granting exceptions rather than the county's review process, which can not supercede state regulations. Internal county review procedures need to vary to meet the county's infrastructure/administrative needs. To further clarify the exception process, CDSS has added Handbook Section 30-757.1(6)(B).

### **Comment #5, Third Item:**

#### **Validity of Field Test**

"The disability advocates on the IHSS HTG Workgroup advocated for a real-time field test to establish guidelines consistent with the statutory mandate -- a "range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient." See Welf. & Inst. Code § 12301.2(a)(2). Instead, CDSS chose to do a field test to validate the faulty guidelines already drafted.

"The tested population in the field test was not representative of the full range of IHSS consumers and their needs. CDSS designed a field test which it readily admits is not statistically valid. There was virtually no attempt to secure a representative sample of IHSS applicants and recipients. Rather, it was based on the six counties that volunteered to participate.<sup>5</sup> Of the counties with more than 100 assessments and 100 reassessments in January 2006, CDSS randomly selected 100 assessments and 100 reassessments to participate in the field test. If a county had fewer than 100 assessments and/or 100 reassessments in January 2006, all of the assessments and/or reassessments participated in the field test.

"A report on the results of the field test, which was distributed at the last IHSS HTG Workgroup meeting on March 15, 2006, says that "of the 3,556 total needs assessed for the 573 recipient sub-sample (recipient needs can be in all 12 service categories), over half (54 percent) of the total needs fell in the proposed ranges and 46 percent fell outside." This means that almost half of the total needs fell outside the established ranges. For the consumers to receive the hours the social workers say they need, social workers will have to

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<sup>5</sup> The six counties were: Humboldt, Kern, Lassen, Riverside, San Bernardino and Santa Barbara.

document and/or request exceptions. As mentioned above, for this sample of 573 consumers, social workers would have had to document 1,636 explanations for exceptions. In the field test, however, social workers documented only 142 exceptions.

"Even though the social workers were not required to provide such documentation, the failure to document in the field test clearly indicates that the proposed regulations would add a lot of additional work to already overworked social workers. In addition, social workers have been trained to document everything and, yet, the social workers failed to provide adequate documentation over 90% of the time. It would be unlikely that, if and when the proposed regulations are adopted, the social workers would document exceptions.

"Whether or not the field test was statistically valid, it would only prove that the proposed regulations create a large obstacle for social workers to grant the appropriate number of hours a consumer needs. Certainly, the field test does not show that the proposed regulations reflect the "range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient."

**Response:**

See responses General Comment #1.

**General Comment #5, Fourth Item:**

**Use of Functional Index Ranks**

"CDSS decided to develop ranges for each task by functional index rank. PAI has some concerns with this approach. As Joan Boomer of CDSS admitted at the November 3, 2005 meeting of the IHSS HTG Workgroup, following an initial assessment, county social workers rarely reevaluate a consumer's functional index rank as they are required, even during a reassessment. Therefore, a consumer may enter the IHSS program with a functional index rank of 3. But, over time, the consumer's condition may deteriorate to a functional index of 4 and then s/he would be stuck with the range for a consumer with a functional index rank of 3. For example, a consumer in the early stages of multiple sclerosis (MS) who enters the IHSS program with a functional index rank of 3 and needs bowel and bladder care would be assessed using a range of weekly hours of 1 to 2.66. Even after the consumer's condition deteriorates to the equivalent of a functional index rank of 4, however, s/he will still be assessed using the same range. If the consumer happened to have their initial assessment at the time of the reassessment, s/he would have been assessed using a range of weekly hours of 2.45 to 5.25 based on the consumer's higher functional index rank. Thus, basing the ranges for each task on the functional index rank would result in an arbitrary and inaccurate assessment of consumers' needs.

"While CDSS may have put in their social worker training a reminder that the functional index rank must be redetermined during every reassessment, it does not mean that the current practice will not continue. After all, the regulations have always required that county social workers look at the functional level every time they reassess a consumer and yet they typically have not done so.

**Response:**

CDSS acknowledged the tendency for workers to **increase** [emphasis added] service time needed to address changing needs over time when a recipient's condition deteriorates without also changing the function index ranking appropriately, and this issue has been addressed in Social Worker Training. However, this issue does not pose a problem with the proposed regulations since the proposed regulations provide that the "functional index is a factor, but not the sole factor" (Section 30-757.1(a)(1)) for determining time when applying the time guideline. Consequently, recipients are not locked into receiving time based on their functional index when their needs change. In fact, based on current practice of continuing to increase time needed, the proposed regulations use of function index with time guidelines is more likely to make workers' aware that the change in needs which resulted in their increasing time may also require a change in the function index for the need. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**General Comment #5, Fifth Item:**

**Tone of Proposed Regulations**

"During our workgroup meetings, CDSS staff has repeatedly said that the purpose of establishing HTG is not to lower consumers' allotted hours. In fact, CDSS staff has said that, in some cases, hours may be increased as a result since the object is to have uniform guidelines. However, the proposed regulations, in the sections titled "handbook," which contains mostly examples, emphasize how social workers can reduce a person's hours, rather than increase them. We would urge that the examples be changed, and/or other examples be added, to include ways to increase hours."

**Response:**

See response to General Comment #1, Fifth Item.

**General Comment #6:**

Pamela Brown, a private citizen commented that "all other governmental entities have an annual cost of living increase and other considerations. Why has IHSS not given its workers an annual hourly wage increase? That is just not humane."

**Response:**

These comments are beyond the scope of these regulations as authorized by Welfare and Institutions Code Section 12301.2. For this reason no changes to the proposed regulations have been made as a result of this testimony.



## **ORAL COMMENTS**

### **Oral Comment #1:**

Deborah Doctor, of PAI testified that she wanted to add something to PAI's written comments because this information was not available earlier. "[T]he comment that I would like to add concerns the outcome of the consumer survey that was done concerning the hourly task guidelines and the State's compilation of those results as reported on the web site, CDSS web site. It shows that 32 per cent of the consumers who were interviewed -- who got the survey -- who responded to the surveys said the following; that the number of hours that they were assessed for IHSS, as part of their January assessment or reassessment were not sufficient to provide the services that were proved in their assessment.

"And since the whole purpose of an IHSS assessment is and remains an assignment of hours sufficient to provide the services that have been authorized, I believe that that calls into question the hourly task guidelines and the assumptions on which they were based. To us, that is the key question, did you get enough hours to complete the services. And with that significant a portion of people saying, no, they did not, we believe that negates the validity of the guidelines."

### **Response:**

CDSS does not agree with the testifier's conclusion that the proposed time guidelines are invalid.

First, the proposed time guidelines were calculated using the central half of values of the entire statewide caseload of 360,000 cases, and the testifier is concluding it is invalid based on 93 respondents (32 percent of the 288 who completed surveys from the field test of 573 cases).

Second, the testifier based this conclusion on survey respondents who did not have the benefit of having the proposed statewide time guidelines applied to their cases (none did in the field test). Therefore, it is unknown what their responses would have been had the proposed time standards, that include exception criteria to guide in increasing time above the state-established guideline values, been applied. When comparing field test service authorizations that were based on existing practice (without a uniform statewide time standard guide), to the proposed time guideline ranges of the 46 percent of needs assessed outside the statewide standard, 57 percent were assessed less time than the statewide standard. Consequently, the 93 respondents dissatisfied could be part of those who had time authorized less than the proposed time guidelines and they may have answered differently had the time standards been applied in their cases.

Third, the respondent's reasons for their dissatisfaction could be related to various factors such as the provider's performance or the recipient's "wants" versus "needs," i.e., the recipient's needs assessment determined the recipient was able to perform certain tasks, so less time was assessed to pay the provider, etc. Consequently, the fact that the respondents are dissatisfied with service authorizations does not mean the service authorizations were incorrect based on applicable regulations.

And finally, the most important point to emphasize is, the mere fact that the respondents were dissatisfied with service authorizations does not mean the service authorizations were not accurately assessed. Consequently, there are too many variables unrelated to the calculation of the proposed time guidelines to conclude that it is invalid based on the survey responses. . For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**Oral Comment #2:**

Karen Keeslar, on behalf of CAPA testified that "We submitted written comments last night, via e-mail, and the comments were reflecting a shared set of concerns that are articulated by a variety of coalition partners and stakeholders. So I won't repeat everything that's in our written comments.

"One additional comment that we wanted to make this morning deals with exactly this process of doing surveys for the consumers to solicit whether the regulations are achieving the statutory purpose. As Deborah Doctor just mentioned, there was the field test conducted in January and, subsequently, a survey. And what we've heard from consumers, in particular Herb Meyer (phonetic), who's the Chair of the Marin County Public Authority Board, is that they would like to see continuation of surveys so that consumers can be providing information to the State, counties, public authorities, and policymakers. Not just on this point, but as we go through implementation of the regulations and the rollout of these new hourly task guidelines. So we would ask that the regulations be amended to include ongoing surveys from consumers and the ability to assess that data."

**Response:**

See response to General Comment #2.

**Oral Comment #3:**

Tamara Rasberry, from SEIU testified that "...our union represents almost 175 home care workers in the State, and we also represent several social workers, who are case workers of IHSS. And we are also sponsors of the coalition letter that was e-mailed last night. And I just want to reiterate a point here that affects not only the overall plans for the program, but it affects another entity of SEIU, which are our social workers, that the regulations provide clarification on how exceptions are processed. There's a lot that we're assuming would happen and we really support that regulations clarify how exceptions will be processed by not only the case workers, but by supervisors, so that it's a very clear understanding that the intention of the exceptions isn't to try to suppress the number of hours assessed by a case worker, but to give the consumer an adequate amount of hours that they will need to live independently."

**Response:**

See response to General Comment #5, Second Item.

## **SPECIFIC COMMENTS**

### **Section 30-757.1(a)(5)**

#### **Comment:**

Charlene Locke of CDDS commented that "[a]n exception should be made to hourly task guidelines due to inefficiency or incompetence of the provider. The recipient should not be penalized due to the inefficiency or incompetence of the provider. If the provider is inefficient or incompetent other avenues should be explored, ( i.e. provider training, etc.)."

#### **Response:**

See response to General Comment #4, Third Item.

### **Section 30-757.131**

#### **Comment:**

Charlene Locke of CDDS asked "[w]hy is “trimming meat” being eliminated? Suggest cleaning the oven and cleaning the stove be included in the related domestic services.

#### **Response:**

CDSS agrees with testifier that “trimming meat” should not have been deleted under “meal prep” and has put this language back into proposed Section 30-757.131.

### **Section 30-757.131(a)**

#### **Comment:**

Charlene Locke of CDDS asked "[w]ill there be tools available for the worker to determine the average time to factor in when considering the consumer’s functional skills? This is a general question that pertains to all tasks.

#### **Response:**

The worker determines the individual’s functional capacity based on current regulations at Section 30-756 by making observations and asking questions when conducting the individualized assessment. As part of this process, the worker will determine service time necessary to ensure the health, safety, and independence of the individual when considering the amount of time to apply using the proposed time guidelines at Section 30-757. No changes to the proposed regulations have been made as a result of this testimony.

**Comment:**

BTLS testified that the Department needs to define how to determine the continuum of low to high need and provided the following: "The Manual of Policies and Procedures Social Service Standards (MPP) [Section]30-756.1 outlines how to assess a consumer's need by ranking consumer on scale from 1 to , 5. The time for task guidelines then uses this rank as a basis for the consumer's weekly hours. For example, according to MPP [Section]30.757.131(a) Preparation of Meals for someone who is Rank 2 and has low need receives 3.02 hours per week; someone who is rank 2 with high need receives 7.0 hours per week. However, the MPP does not define or explain how IHSS determines what constitutes low or high need. Please explain how IHSS determines the level of Low to High need that corresponds to the Rank and determines the hours received."

**Response:**

CDSS does not agree with testifier's comment requesting that regulations should explain what constitutes the "low" or "high" need within the time ranges based on the rank. The two numbers listed in the regulations reflect the top and bottom range of time in the Hourly Task Guidelines (HTGs), not the two options available for authorization. Each instance where the range is listed, the preceding language is: "The weekly guideline **range** [emphasis added] for [the specified task] shall be as follows unless the recipient's needs require an exception." That wording makes it clear that the Hourly Task Guideline times are neither the high nor low. The intent is that the social worker, the appropriately trained professional conducting the assessment of the individual's needs, will make observations involving the unique circumstances of each individual's variances in need and specific living circumstances and authorize services consistent with the consumer's individual needs, subject to the Hourly Task Guidelines, as appropriate. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**Section 30-757.132(c)**

**Comment:**

PAI commented that there is a numbering problem in Section 30-757.132(c). There are two subsections (2).

**Response:**

The Department disagrees. There is only one Subsection 30-757.132(c)(2).

**Section 30-757.132(c)(2)(A) Handbook**

**Comment:**

PAI commented that the handbook example following Section 30-757.132(c)(2) reads as follows:

"A consumer who chooses to eat only toast and coffee for breakfast would require less time for cleanup than a consumer who chooses to eat eggs and bacon."

To make this example not infer that a social worker should look to reduce hours, the following sentence should replace the current example:

“A consumer who chooses to eat bacon and eggs for breakfast would require more time to clean up than a consumer who chooses to eat only toast and coffee.”

**Response:**

CDSS agrees to the testifier’s suggested change and has replaced the order of the language at Section 30-757.132(c)(2) accordingly.

**Sections 30-757.134(c) and (d)**

**Comment:**

PAI testified that “[p]eople with bowel or bladder incontinence generally need laundry done more often than one hour per week. Therefore, for clarity sake, we recommend that the following sentence be added to the end of both subsections (c) and (d): “Bowel or bladder incontinence shall result in an exception to this time limit.”

**Response:**

CDSS agrees that people with incontinence “may” need laundry done more often, but does not agree that is always the case due to variance in the degree of incontinence. To address the testifier’s concern, CDSS has added Section 30-757.134(e) stating, “An exception to grant more time than the time guidelines specified in Sections 30-757.134(c) and (d) may be necessary for recipients who have incontinence.”

**Section 30-757.134(d)(1) Handbook**

**Comment:**

PAI testified that the handbook following subsection (d) states as follows:

“It is expected that the typical provider will use a local laundromat during nonpeak-hour times and will utilize as many machines simultaneously as necessary for efficient time utilization.”

It is not clear what “nonpeak-hour times” are. The proposed regulations should consider whether or not a consumer can find a provider to do laundry during “nonpeak-hours times.” For example, a consumer might go to school during the day and not want a provider to work when they cannot supervise

**Response:**

CDSS agrees with the testifier and for clarity has modified Handbook Section 30-757.134(d)(1) to read: “It is expected that the typical provider will use a local laundromat as necessary for efficient time utilization.”

**Section 30-757.135(b)(1)**

**Comment:**

Charlene Locke of CDDS asked "[i]s travel time, making a list, loading and unloading included in the 1 hour time line? Submit that 1.0 hour total per week per household is not enough time."

**Response:**

The time guideline is all-inclusive and exceptions may be granted if this time is not sufficient to meet those needs. This regulation reflects the current time guideline policy relocated from Section 30-758.13 that remains unchanged by the proposed time guideline ranges for services without current time guidelines. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**Section 30-757.135(c)(1)**

**Comment:**

Charlene Locke of CDDS asked [I]s travel time, making a list, loading and unloading included in the 0.5 hour time line? Submit that 0.5 hour total per week per household is not enough time.

**Response:**

The time guideline is all-inclusive and exceptions may be granted if this time is not sufficient to meet those needs. This regulation reflects the current time guideline policy relocated from Section 30-758.14 that remains unchanged by the proposed time guideline ranges for services without current time guidelines. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**Section 30-757.14(c)(4)(E) [should be (c)(5)(H)]**

**Comment:**

PAI testified that generally, "it takes longer to feed somebody who uses a naso-gastrostomy (NG) or gastrostomy tube (G-tube), particularly with a slow pump rate. Therefore, PAI requests that the following exception for the HTG for feeding be added under Section 30-757.14(c)(4)(E) [Exceptions in (c)(5)] Time for feeding by NG or G-tube, particularly where feeding is done by slow pump rate."

**Response:**

CDSS does not agree with testifier. Feeding by NG or G-tube is assessed under "paramedical" at Section 30-757.19. For this reason no changes to the proposed regulations have been made as a result of this testimony.

### **Section 30-757.14(d)**

#### **Comment:**

BTLS commented that "[r]outine bed baths should also include applying powder and deodorant. MPP 30-757.14(e) bathing section lists powder and deodorant. Bed baths tasks, MPP [Section] 30-757.14(d), should agree with tasks for baths, MPP [Section] 30-757.14(e), and include applying powder and deodorant as additional tasks.

#### **Response:**

CDSS agrees with testifier. Applying "powder and deodorant" was inadvertently left out of Section 30-757.14(d) and has been added.

### **Section 30-757.14(f)**

#### **Comment:**

BTLS commented that "[t]he task of undressing and dressing as part of the bathing process is not included in either bathing section, MPP [Section] 30-757.14(d) or MPP [Section] 30-757.14(e). The dressing section, MPP [Section] 30-757.14(1), does not list frequency of bathing as a factor to consider in assessing dressing time. It is unclear whether the time needed for the undressing and dressing task, a part of the bathing process, should be assessed as part of the bathing or dressing tasks. Please clarify this.

#### **Response:**

The task of "dressing" for any reason is assessed under "dressing" specified at Section 30-757.14(f). To address the testifiers concern, CDSS has added, "If the recipient frequently bathes and requires additional dressing or" as an additional factor for consideration in Section 30-757.14(f)(3)(B).

### **Section 30-757.14(k)**

#### **Comment:**

Charlene Locke of CDDS commented that this section "should include assistance to/from the car for medical accompaniment and/or alternative resource travel."

#### **Response:**

CDSS does not agree with testifier. Assistance to/from the car during medical accompaniment and/or alternative resource travel is assessed under "transportation" to/from this travel as specified under Section 30-757.15, which remains unaffected by a time guideline policy. For these reasons no changes to the proposed regulations have been made as a result of this testimony.

**Comment:**

BTLS commented that MPP [Section] 30-757.11(k) adds wheelchair cleaning, and changing and recharging wheelchair batteries (and assumes wheelchair maintenance) to Domestic Services. For persons who doesn't use a wheelchairs, the standard 6 hours a month for Domestic services is in itself insufficient to truly perform all the tasks of domestic services. A person who requires wheelchair cleaning and charging in addition to the standard domestic services tasks will have to forego other tasks contemplated in this category in order to maintain their wheelchair. This places an extra burden on persons who use wheelchairs and penalizes them for needing wheelchair charging and cleaning to the exclusion of other domestic services tasks.

In order to be consistent and not penalize persons who use wheelchairs, wheelchair cleaning and charging may be placed in MPP [Section] 30-757.14(i) Assistance with Prosthesis. A wheelchair is similar to a prosthesis in that a prosthesis is a man-made device used to replace a normal body part or function and a wheelchair services a similar purpose replacing the function of walking with ambulating with a wheelchair. If time for this task is placed in MPP [Section] 30-757.14(i), those using wheelchairs may use specific time for wheelchair maintenance. They would not need to use domestic servlces time to maintain their wheelchair to the exclusion of actual domestic services.

**Response:**

See response to General Comment #3, Third Item, pertaining to wheelchair cleaning which also pertains to wheelchair charging.

f) **15-Day Renotice Statement**

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from June 15, 2006 to June 30, 2006 was received from the following:

- John Stansbury, Executive Director of the IHSS Public Authority of Marin

The testifier's comment and the Department's response to the comment follow.

**Comment:**

"The purpose of this letter is to make suggestions for removing some unintended ambiguities resulting from the amendments in response to stakeholder suggestions.

**'Exceptions' vs. 'Service Needs Outside the Guidelines'**

"As noted earlier, the concept of 'exceptions' is *not* in the statute. The word 'exception' necessarily means something unusual.

"American Heritage Dictionary (3rd Ed. 1992) defines 'exception' in part as follows: '...2. One that is excepted, especially a case that does not conform to a rule or generalization.'



"'Exceptional' is defined: '1. Being an exception; uncommon. 2. Well above average; extraordinary: an exceptional memory.'

"We appreciate the fact that the statutory concept of service needs falling outside the guidelines has been added to the proposed regulations. However, we are concerned that if the concept of 'exception' remains, there will be an ambiguity. Are exceptions exceptional, or are they a normal part of the assessment process?

"Thus, we request that the proposed regulations be reworded to remove all reference to the concept of 'exceptions'.

"For example, in MPP 30-757.1(a), the first sentence could be stricken as the point is now covered by the second sentence.

"MPP 30-757.1(a) subparagraphs (2) through (6) could be covered simply by tracking statutory language:

"When an individual's service needs fall outside the guidelines, counties shall approve an amount of time different from the guideline amount. The need for the authorized service level shall be documented. Service needs falling outside the guidelines are a normal part of the authorization process.

"Each following task guideline repeats the 'exception' concept. Each guideline could be modified (e.g. MPP 30-757.131(c)) to read, "Criteria for determining when an individual's service falls outside the guideline range include, but are not limited to:

"Again, thank you for your careful attention to these important matters. Since the Quality Assurance Initiative became law, we have believed that the hourly task guideline development process would shape the quality, fairness and effectiveness of the IHSS program for years to come."

### **Response:**

The testifier requested that the use of the word "exception" be stricken from the regulations and be substituted with the statutory language of "service needs outside the guidelines".

This question was previously asked and answered in our response to the comments received during the 45-day public comment period. Specifically, this question and answer was noted in pages 24 and 25 of the Final Statement of Reasons titled General Comment #4 Second Item: "Exceptions" vs. "Service Needs." In our response we stated "Additionally it is CDSS' position that the word "exception" is the appropriate term to identify criteria for granting time outside the "normal range of time" based on one of its meanings: *a case to which a rule, general principle, etc., does not apply...*" Lastly, the use of the term "exception" is widely used within CDSS in other program regulations in the Manual of Policies and Procedures, as well as in program regulations in Title 22. As a result, no further changes will be made to the regulations.